

The Administrative Law Judge found claimant injured his right upper extremity in a work-related November 25, 1996, accident and injured his left upper extremity in a separate November 15, 1998, work-related accident. The Administrative Law Judge awarded claimant permanent partial disability benefits limited to a 20 percent functional impairment for a scheduled right arm including the shoulder level for the November 25, 1996, accident. In regard to the November 15, 1998, accident, the Administrative Law Judge awarded claimant

permanent partial disability benefits limited to a 15 percent permanent functional impairment of a scheduled left arm at the shoulder level.

On appeal, claimant contends he has proven he suffered simultaneous bilateral upper extremity injuries entitling him to a whole body injury and permanent partial general disability benefits based on a work disability.

Conversely, respondent contends the Administrative Law Judge's award should be affirmed. Respondent argues the evidence established that claimant suffered two separate work-related accidents. The first was on November 25, 1996, when claimant injured his right upper extremity and then, on November 15, 1998, almost two years later, claimant had a separate work-related injury to his left upper extremity. Respondent argues claimant has failed to prove simultaneous aggravation of the upper extremities resulting in a whole body injury. Thus, respondent asserts claimant is limited to permanent partial disability benefits for two separate scheduled upper extremity injuries including both shoulders.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board makes the following findings and conclusions:

The Administrative Law Judge found claimant injured his right upper extremity and shoulder when he was lifting a cover plate while employed by the respondent on November 25, 1996. In addition, the Administrative Law Judge found claimant injured his left upper extremity nearly two years later in a separate work-related accident while he was loosening some bolts with a box wrench while working for the respondent on November 15, 1998.

The Appeals Board agrees with the Administrative Law Judge and concludes the record supports the finding that claimant suffered two separate scheduled injuries and did not suffer simultaneous bilateral upper extremity injuries resulting in a whole body injury. Furthermore, the Appeals Board agrees with the Administrative Law Judge's analysis of the evidence as set forth in the Award. The Appeals Board finds the Administrative Law Judge's Award sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein.

In particular, the Appeals Board finds the medical records admitted into the record and the testimony of claimant's treating physician, J. Mark Melhorn, M.D., claimant's examining and evaluating physician, Edward J. Prostic, M.D., and respondent's plant nurse, Michelle Green, support the conclusion that claimant had no left upper extremity complaints until he suffered a specific accident that he reported to the respondent on November 15, 1998.

¹ See K.S.A. 1996 Supp. 44-510d(a)(13).

An incident report dated November 15, 1998, was admitted into the record and indicates claimant suffered a burning sensation and pain in his left elbow and forearm while using a box end wrench to pull bolts. Michelle Green, the plant nurse, testified that her calendar indicated she saw claimant on November 15, 1998, with complaints of pain in his left forearm. Ms. Green did not indicate she had previously seen claimant with any left arm complaints before that date.

Claimant's attorney sent claimant for examination and evaluation to orthopedic surgeon Dr. Prostic on November 10, 1998. This was some five days before claimant's reported November 15, 1998, accident. The only complaints claimant had during his examination with Dr. Prostic were to his right upper extremity and not to his left upper extremity.

Additionally, Dr. Melhorn first saw claimant for right upper extremity complaints on July 25, 1997. He then saw claimant on eight other occasions after July 25, 1997, through December 30, 1998. Dr. Melhorn testified the first left upper extremity complaints claimant made were after the November 15, 1998, incident at work when Dr. Melhorn saw claimant on December 23, 1998.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's July 20, 2000, Award should be, and is hereby, affirmed.

All authorized medical expenses are ordered paid by the respondent.

All remaining orders of the Administrative Law Judge as set forth in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director